

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE

**DERRICK BRYANT v. DAVID MILLS, WARDEN**

**Appeal from the Circuit Court for Morgan County**  
**No. 9356 E. Eugene Eblen, Judge**

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**No. E2007-02267-CCA-R3-HC - Filed February 25, 2008**

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The pro se petitioner, Derrick Bryant, appeals the Morgan County Circuit Court's summary dismissal of his petition for a writ of habeas corpus. The state has filed a motion requesting that this court affirm the trial court's denial of relief pursuant to Rule 20 of the Rules of the Court of Criminal Appeals. Following our review, we conclude that the state's motion is well-taken, and the judgment of trial court is affirmed.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court is Affirmed**  
**Pursuant to Rule 20, Rules of the Court of Criminal Appeals**

D. KELLY THOMAS, JR, J., delivered the opinion of the court, in which JOSEPH M. TIPTON, P.J., and NORMA MCGEE OGLE, J., joined.

Derrick Bryant, Wartburg, Tennessee, Pro Se.

Robert E. Cooper, Jr., Attorney General and Reporter; and Jennifer L. Bledsoe and John Bledsoe, Assistant Attorneys General, attorneys for appellee, State of Tennessee.

**MEMORANDUM OPINION**

The petitioner was convicted after a jury trial of first degree murder and received a life sentence. His conviction and sentence were affirmed on direct appeal. State v. Derrick Bryant, No. E2000-01835-CCA-R3-CD, 2001 WL 1187916 (Tenn. Crim. App. Oct. 9, 2001), app. denied (Tenn. Feb. 11, 2002). A post-conviction petition was denied on the merits, and this court affirmed the denial on appeal. Derrick Bryant v. State, No. E2003-02911-CCA-R3-PC, 2004 WL 2002463 (Tenn. Crim. App. Sept. 8, 2004), app. denied (Tenn. Feb. 28, 2005).

The petition for a writ of habeas corpus alleges that the judgment of conviction is void because the petitioner's transfer from juvenile court to adult court was illegal, the evidence is

insufficient to support his convictions, and there is insufficient proof of his mental state in light of his alleged diminished capacity at the time of the offense. The state filed a motion to dismiss for failure to state a cognizable claim. The habeas corpus court summarily granted the motion to dismiss. The petitioner now appeals, and the state has filed a motion asking this court to affirm the judgment of the habeas corpus court pursuant to Rule 20 of the Rules of the Court of Criminal Appeals.

Tennessee law provides that “[a]ny person imprisoned or restrained of his liberty under any pretense whatsoever . . . may prosecute a writ of habeas corpus to inquire into the cause of such imprisonment.” Tenn. Code Ann. § 29-21-101. Habeas corpus relief is limited and available only when it appears on the face of the judgment or the record of proceedings below that a trial court was without jurisdiction to convict the petitioner or that the petitioner’s sentence has expired. Archer v. State, 851 S.W.2d 157, 164 (Tenn. 1993). To prevail on a petition for a writ of habeas corpus, a petitioner must establish by a preponderance of the evidence that a judgment is void or that a term of imprisonment has expired. See State ex rel. Kuntz v. Bomar, 214 Tenn. 500, 504, 381 S.W.2d 290, 291-92 (1964). If a petition fails to state a cognizable claim, it may be dismissed summarily by the trial court without further inquiry. See State ex rel. Byrd v. Bomar, 214 Tenn. 476, 483, 381 S.W.2d 280, 283 (1964); Tenn. Code Ann. § 29-21-109. We note that the determination of whether to grant habeas corpus relief is a matter of law; therefore, we will review the habeas corpus court’s finding de novo without a presumption of correctness. McLaney v. Bell, 59 S.W.3d 90, 92 (Tenn. 2001).

The state correctly asserts that the dismissal of the petition was proper because the petitioner failed to comply with the statutory requirements of Tennessee Code Annotated section 29-21-107 by failing to attach a copy of the judgment of conviction to the petition. Furthermore, all of the claims raised in the petition have been previously determined either on direct appeal or post-conviction to be without merit. Finally, the allegations of relief would not render the judgment of conviction void, but merely voidable, and are not cognizable in a habeas corpus proceeding. See Passarella v. State, 891 S.W.2d 619, 627 (Tenn. Crim. App. 1994); Luttrell v. State, 644 S.W.2d 408, 409 (Tenn. Crim. App. 1982). Therefore, the habeas corpus court correctly dismissed the petition. Having discerned no error of law requiring reversal of the judgment of the habeas corpus court, we conclude that the state’s motion for an affirmance pursuant to Rule 20 of the Court of Criminal Appeals is granted.

For the reasons stated, the judgment of the habeas corpus court is affirmed in accordance with Rule 20 of the Rules of the Court of Criminal Appeals.

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D. KELLY THOMAS, JR., JUDGE